

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

MIRAGE WINE + SPIRIT'S, INC., d/b/a MIRAGE
WINE & SPIRITS; MARTLET MEADOWS FARM,
LLC, d/b/a DOUBLE BUBBLE CAR WASH;
PARCELLE LLC, d/b/a PARCELLE ORGANICS;
FOGGY BOTTOMS BOYS, LLC; and FAMILIA
COFFEE, Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

APPLE INC., VISA INC., and MASTERCARD
INCORPORATED,

Defendants.

Case No. 3:23-cv-03942

Hon. David W. Dugan

DEFENDANTS' UNOPPOSED MOTION TO FILE UNDER SEAL

Defendants Apple Inc., Visa Inc., and Mastercard Incorporated respectfully move this Court for leave to file their Reply Memoranda of Law in Support of Visa and Mastercard's Motion to Dismiss (ECF No. 115) and Apple's Motion to Dismiss (ECF No. 119) under seal. Defendants will additionally file redacted versions of the same briefs for the public record. Plaintiffs consent to this motion.

On September 26, 2024, this Court granted Defendants' Unopposed Motion to File Under Seal the confidential contract terms in Apple's Payment Platform Agreements with Visa and with Mastercard in conjunction with Defendants' Motions to Dismiss, ordering that Defendants may file these Agreements as sealed Exhibits to their Motions to Dismiss, and that Defendants may redact descriptions of those confidential contract terms in the public versions of their supporting Memoranda of Law (ECF No. 114). On November 7, 2024, this Court granted a similar motion by Plaintiffs, ordering Plaintiffs to file their Memorandum of Law in Opposition to Defendants' Motions to Dismiss under seal so as to maintain the confidentiality of the terms of

the Payment Platform Agreements as cited in Plaintiffs’ brief (ECF No. 153). In doing so, the Court recognized that the confidential treatment of the cited contract terms is warranted “for good cause,” for which this Court may “order that a filing be made under seal without redaction” and “order the person who made the filing to file a redacted version for the public record.” ECF Nos. 114 & 153 (citing Fed. R. Civ. P. 5.2(d), 5.2(f), and 26(c)(1)(G)).

The same good cause exists here. Defendants’ instant motion seeks to extend the same scope of confidentiality protection—which this Court already granted as to the opening and opposing briefs related to Defendants’ Motions to Dismiss—to Defendants’ reply briefs in support of those same motions. The proposed redactions in Defendants’ Reply Memoranda of Law are narrowly tailored and consistent with the redactions in Defendants’ Opening Memoranda of Law. They concern the same confidential agreements and terms in the Apple-Visa Payment Platform Agreement and the Apple-Mastercard Payment Platform Agreement, which have been kept under seal during the course of this litigation by order of this Court, and are designed to protect the same commercially sensitive, highly confidential business terms negotiated by the parties in these Payment Platform Agreements. Because good cause exists for “maintain[ing] the confidentiality” of “non-public financial and business information,” *United States v. Courtright*, 2020 WL 774391, at *2 (S.D. Ill. Feb. 18, 2020) (citing *Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999)), and because the highly confidential and competitively sensitive nature of the cited contract provisions outweigh the public interest in their disclosure, *see Hadley v. AstraZeneca Pharms. PLC*, 2018 WL 4491184, at *3 (S.D. Ill. Sept. 19, 2018), leave for filing under seal is warranted under Federal Rules of Civil Procedure 5.2 and 26.

CONCLUSION

Defendants respectfully request that the Court issue an Order permitting Defendants to:

(i) file under seal any Reply Memoranda of Law in Support of Visa and Mastercard's Motion to Dismiss Plaintiffs' Amended Complaint and Apple's Motion to Dismiss Plaintiffs' Amended Complaint; and (ii) file redacted versions of the same Reply Memoranda for the public record.

Dated: December 4, 2024

Respectfully submitted,

**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**

/s/ Nina Kovalenko

Brette Tannenbaum (admitted *pro hac vice*)

Nina Kovalenko (admitted *pro hac vice*)

Gary R. Carney (admitted *pro hac vice*)

1285 Avenue of the Americas

New York, NY 10019

(212) 373-3000

btannenbaum@paulweiss.com

nkovalenko@paulweiss.com

gcarney@paulweiss.com

Kenneth A. Gallo (admitted *pro hac vice*)

Donna Ioffredo (admitted *pro hac vice*)

2001 K Street, NW

Washington, D.C. 20006

(202) 223-7300

dioffredo@paulweiss.com

kgallo@paulweiss.com

Counsel for Defendant Mastercard Incorporated

ARNOLD & PORTER KAYE SCHOLER LLP

/s/ Matthew Eisenstein (with consent)

Robert J. Vizas

Three Embarcadero Center, Tenth Floor

San Francisco, CA 94111-4024

(415) 471.3100

robert.vizas@arnoldporter.com

Anne P. Davis
Matthew A. Eisenstein (admitted *pro hac vice*)
601 Massachusetts Avenue, NW
Washington, DC 20001-3743
(202) 942-5000
anne.davis@arnoldporter.com
matthew.eisenstein@arnoldporter.com

HOLWELL SHUSTER & GOLDBERG LLP

Michael S. Shuster (admitted *pro hac vice*)
Demian A. Ordway (admitted *pro hac vice*)
Blair E. Kaminsky
Jayme Jonat
425 Lexington Avenue
New York, NY 10017 (646) 837-5151
mshuster@hsgllp.com
dordway@hsgllp.com
bkaminsky@hsgllp.com

Counsel for Defendant Visa Inc.

LATHAM & WATKINS LLP

/s/ Belinda S. Lee (with consent)
Belinda S Lee (admitted *pro hac vice*)
Sarah M. Ray
Ashley M. Bauer
Aaron T. Chiu
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Tel.: (415) 391-0600
Fax: (415) 395-8095
belinda.lee@lw.com
sarah.ray@lw.com
ashley.bauer@lw.com
aaron.chiu@lw.com

Counsel for Defendant Apple Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 4, 2024, a true and correct copy of the foregoing was filed electronically and served on all counsel of record via the CM/ECF System in the above-captioned case.

/s/ Nina Kovalenko

Nina Kovalenko